Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1978

No. 78-695

DARRELL WAYNE FOWLER,
Petitioner,

vs.

THE STATE OF IOWA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of Iowa entered on the 26th day of July, 1978, is appended to the Petition for a Writ of Certiorari.

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JURISDICTIONAL STATEMENT

The Petition for Writ of Certiorari is improperly invoked under 28 U. S. C. § 1257 (3).

———o———

QUESTION PRESENTED

May the State use an inculpatory statement as substantive prosecutory evidence after the restriction of a person's liberty.

———o———

STATEMENT OF THE CASE

The Statement of the Case is adequately set forth in the Petition.

———o———

ARGUMENT

Petitioner alleges his fifth amendment privilege against self incrimination was disregarded by the trial court when Defendant's Motion to Suppress the statement "I got mad and shot her" was overruled and that statement was heard by the jury over Defendant's objections. Petitioner raises that issue here for the first time.

The Supreme Court does not have jurisdiction to decide Petitioner's issue. "[T]he [Supreme] Court will not

decide federal constitutional issues raised here for the first time on review of state court decisions." *Cardinale v. Louisiana,* 394 U. S. 437, 438, 89 S. Ct. 1162, 22 L. Ed. 2d 398, 400 (1969); accord, *Hill v. California,* 401 U. S. 797, 91 S. Ct. 1106, 28 L. Ed. 2d 484 (1971); and *Tacon v. Arizona,* 410 U. S. 350, 93 S. Ct. 998, 35 L. Ed. 2d 346 (1973). The *Cardinale* decision was based on the Supreme Court's limited jurisdiction to review final judgments of state courts. 28 USC § 1257. *Cardinale* also noted sound reasons for the limited jurisdiction: (1) an inadequate record is very likely for an issue not raised below, (2) when a state statute faces constitutional challenge state courts should have the first opportunity to construe the statute in a way which saves its constitutionality, and (3) an adequate state ground may block the issue.

———o———

CONCLUSION

In view of Petitioner's failure to raise the fifth amendment issue in the Iowa Supreme Court, the writ should be dismissed for want of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ray Sullins, Special Assistant Attorney General for the State of Iowa, hereby certify that on the 22 day of November, 1978, I mailed three (3) copies of Brief for Respondent in opposition, correct 1st class postage prepaid to:

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I further certify that all parties required to be served have been served.

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